

From: Islands2050
Sent: Wednesday, June 9, 2021 9:35 AM
To: Islands2050
Subject: FW: M Sketch town hall submission for trust programs committee 09Apr2021
Attachments: M Sketch oral delegation submission to Trust Council for 09Mar2021.pdf; Town Hall for trust programs committee 08Apr2021.pdf

From: MICHAEL SKETCH [REDACTED]
Sent: Thursday, April 8, 2021 4:32 AM
To: Robert Barlow <rbarlow@islandstrust.bc.ca>; Deb Morrison <dmorrison@islandstrust.bc.ca>; Timothy Peterson <tpeterson@islandstrust.bc.ca>; Paul Brent <pbrent@islandstrust.bc.ca>; Scott Colbourne <scolbourne@islandstrust.bc.ca>; David Critchley <dcritchley@islandstrust.bc.ca>; Doug Fenton <dfenton@islandstrust.bc.ca>; Michael Kaile <mkaile@islandstrust.bc.ca>; Kees Langereis <klangereis@islandstrust.bc.ca>; bmconchie@islandstrust.bc.ca; Dan Rogers <drogers@islandstrust.bc.ca>; Peter Luckham <pluckham@islandstrust.bc.ca>; Clare Frater <cfrater@islandstrust.bc.ca>; Lisa Wilcox <lwilcox@islandstrust.bc.ca>
Cc: [REDACTED]
Subject: M Sketch town hall submission for trust programs committee 09Apr2021

Trust Programs Committee and staff - My town hall submission is attached for your trust programs committee meeting starting 9:00 A.M. 09Apr2021.

I address my rewritten trust policy statement which is on your agenda for this morning's meeting. I think it's useful to discuss the policy statement in two parts;

- 1) structure and
- 2) content

and I've commented briefly on each.

I've also included the oral version of my written delegation submission to Trust Council on 09Mar2021. The introduction is improved to reflect councillor comments at that morning's Council session.

A new trust area policy 1.3 is added.

Michael Sketch
[REDACTED]

**Oral delegation submission to the Islands Trust Council from
Michael Sketch for an electronic quarterly meeting,
7:00 p.m. session on Tuesday, 9 March, 2021
a draft trust policy statement**

duty of care: an article of faith for the Islands Trust Act

Trust councillors, staff and the Trust Programs Committee,

This evening, I speak to a rewritten policy statement structure and content. Councillor comment in this morning's Trust Policy Statement session is reflected in this oral submission and I have added general trust area policy 1.3 to those of the written submission.

The province gave intentional latitude to the wording of the trust object, which is the raison d'être for trust bodies. Trust council must give certainty to that latitude in the trust policy statement.

The trust object stipulates preservation and protection of the environment. Today, as in 1974, the very real concern is that the built environment overwhelm the natural environment. Salt water intrusion in island wells, loss of the best flat valley agricultural soils, loss of essential forest canopy; these are all symptoms. Trust area policies can and must establish a lasting balance between the demands of the built environment and needs of the natural environment.

This evening I ask a quorum of Trust Council to refer the revised Trust Policy Statement and procedural bylaw drafts in Appendix 1, to the Trust Programs Committee for inclusion in their review work. In part, the procedural bylaw would give each local trust jurisdiction the right of appeal to trust council to forgive one or more directive policies.

Revision of the Trust Policy Statement

The Act requires that Council adopt, by bylaw, a general statement of policies to further the trust object. The current bylaw is overburdened with advocacy and explanation which is better placed on the trust website. Far better that the bylaw be compact, unambiguous and sufficient to be a regional plan to guide trust area local policy and regulation. A statement of policies; nothing more.

More important, 'preserve and protect' are compromised in the current policy statement. Compromised by ambiguity and wiggly room in wording of directive policies and by Trust Council implementation policy.

Further, there is no direction that the entire process of land use planning; from application to bylaw, be demonstrably accountable to the trust object and to directive trust area policies.

If the policy statement isn't effective in preserving and protecting, Council is responsible for remedy.

Duty of Care

Taken together, i) the trust object and ii) the statutory responsibility of trust bodies to further the object, confer a duty of care owed by trust bodies to the interests immediately affected by changes in land use.

That duty of care should be acknowledged as an article of faith for the Act.

Then let a duty of care to the interests affected by changes in land use inform the first among Council's trust area policies.

The interests affected by changes in land use

The effect of changes in trust area land use to

- 1) the natural environment,
- 2) the predominantly rural built environment,
- 3) First Nations,
- 4) residents and
- 5) the people of British Columbia generally

are both manifest and immediate.

Preservation and protection of the natural environment is sometimes spoken for in the land use planning staff process and by decision makers. But not always.

It follows that a higher duty of care is due the natural environment.

First among trust area policies

A revised policy statement (Appendix 1) for the attention of Council and the Trust Programs Committee begins with:

“Trust bodies and the employees of trust council shall exercise a duty of care to the interests affected by changes in land use; in particular but not limited to the interests of the natural environment, which can not speak for themselves.”

and continues:

“When considering changes in trust area land use which would augment the built environment at the expense of the natural environment, trust bodies shall give priority to the preservation and protection of the natural environment.”

Addressing precaution in the exercise of trust body responsibility for changes in land use:

“Where there is perception but not necessarily certainty, that the built environment will prejudice the ability of natural environment resources to sustain development, then precaution shall inform limitation of growth of the built environment.”

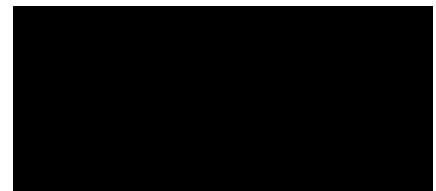
Appendix 1 gives general policies for effective trust governance, followed by directive policies for the protection of agriculture. Other categories of directive policies can be added in the same format.

Based on a first draft of trust area policies (e.g. Appendix 1), Council’s Trust Programs Committee might consider online development of an open source policy statement, with UVIC Environmental Law and Simon Fraser Political Science as moderators. When time and content are right, Trust Council can adopt the result. There would be less emphasis on controlling and funding the process; more on creativity.

Again, Trust Councillors, please resolve to refer the revised Trust Policy Statement and procedural bylaw drafts in Appendix 1, to the Trust Programs Committee for inclusion in their review work.

Thank you.

Michael Sketch



Following:

Appendix 1 – The first drafts of i) a revised trust policy statement and ii) an adjunct procedural bylaw under S.11 of the Act.

Appendix 1 – A draft Trust Policy Statement

The Islands Trust Act establishes a federal governance wherein Trust Council presides over a union of local area land use jurisdictions, each with authority over land use conferred by the Local Government Act

Council's Trust Policy Statement bylaw
is required at Section 15 of the Act and
is a regional plan for the trust area

For the entire trust area, Council holds and recommends to the Conservancy board that:

- 1.1 The interests affected by changes in land use in the trust area are those of:
 - (a) the natural environment and
 - (b) the predominantly rural built environment and
 - (c) first nations and
 - (d) residents and
 - (e) the people of British Columbia generally.
- 1.2 Trust bodies and the employees of trust council shall exercise a duty of care to the interests affected by changes in land use; in particular but not limited to the interests of the natural environment, which can not speak for themselves.
- 1.3 When considering changes in trust area land use which would augment the built environment at the expense of the natural environment, trust bodies shall give priority to the preservation and protection of the natural environment.
- 1.4 Where there is perception but not necessarily certainty, that the built environment will prejudice the ability of natural environment resources to sustain development, then precaution shall inform limitation of growth of the built environment.
- 1.5 To further accountability and transparency in the day to day actions of trust bodies and their employees, the written meeting minutes for all trust bodies shall be published and be consistent with Roberts Rules of Order for meeting minutes which are to be published. For certainty, meeting minutes shall be a comprehensive written record of what was said, in addition to a strict record of was done.
- 1.6 In order that this regional plan for the trust area be effective in furthering the trust object and given that trust bodies are continued for the purpose of carrying out the trust object, policies of the trust policy statement shall be adhered to in the day to day actions of trust bodies and their employees. For certainty, policies of this trust policy statement shall be adhered to by land use planning staff in staff report and other advice to decision makers in the entire development and deliberation of draft bylaws pertaining to applications for changes in land use.

- 1.7 Consistent with the trust object and recitals of the 1996 protocol agreement on agricultural land reserve lands in the trust area, the agricultural land reserve is one of the unique amenities of the trust area.
- 1.8 Given the certainty of a climate emergency and the potential for uncertainties of transportation and distant sources of food, the 13% of trust area lands which are in the agricultural land reserve shall be protected in the long term as a reserve and not treated as a resource for development.
- 1.9 Trust bodies and their employees shall be diligent in respecting and cooperating with shared jurisdiction authorities, including but not limited to the agricultural land commission and regional districts.

Implementation of Directive Policies of the Trust Policy Statement (better placed as a procedural bylaw under S.11 of the Act and copied in a schedule for this trust policy statement bylaw)

- i) Each local trust committee and island municipality shall effectively implement directive trust area policies in their official community plans and regulatory bylaws and
- ii) where a directive policy requires an action not within the local trust committee or island municipality jurisdiction, that directive policy implementation shall consist of advocacy in official community plan policy which details the necessary statutory changes or inter-agency agreements and
- iii) that all staff reports which advise decision makers respecting a change in land use or a policy change, shall include the relevant directive policies and corresponding address in official community plan and regulatory bylaws of the local trust committee or island municipality jurisdiction and
- iv) a local trust committee or island municipality may petition trust council to absolve, given a 2/3 majority vote, the local area jurisdiction from responsibility to implement the subject directive policy in their official community plan and regulatory bylaws and
- v) where a local trust committee or island municipality refuses instruction from trust council to implement one or more directive policies in their official community plan and regulatory bylaws, then trust council reserves the right to withhold sums from the budget allotment to the local area jurisdiction and to the responsible land use planning authority, until such time as the instruction is carried out.

For the trust area, save where Council excuses specific local trust areas from compliance upon application by the local trust area; Council holds and recommends to the Conservancy board:

Directive Agriculture Policies of the Trust Policy Statement

- 2.1 That productive agricultural soils shall be protected, particularly but not limited to protection through bylaws relating to soil removal and deposit.
- 2.2 That applications to trust bodies or referrals by trust bodies for other use than agriculture shall not be supported on trust area land in the agricultural land reserve which is determined by the agricultural land commission to include prime improved agricultural capability class 1 - 3 soils.
- 2.3 That applications to trust bodies or by trust bodies for exclusion from the agricultural land reserve shall not be supported where the subject land is determined by the agricultural land commission to include prime improved agricultural capability class 1 - 3 soils.
- 2.4 For land in the agricultural land reserve which does not include prime improved agricultural capability class 1 - 3 soils as determined by the agricultural land commission; land uses and activities that support the economic viability of farms, without compromising the agriculture capability of agricultural land, shall be encouraged.
- 2.5 The design of road systems and servicing corridors shall avoid agricultural lands unless the need for roads outweighs agricultural considerations, in which case appropriate mitigation measures shall be required to derive a net benefit to agriculture.
- 2.6 Agricultural land shall be identified and preserved for current and future use.
- 2.8 The permitted land uses on adjacent properties shall minimize any adverse affects on agricultural land.
- 2.9 Farming shall be preserved, protected and encouraged and the sustainability of farming and the relationship of farming to other land uses shall be incorporated in local area official community plans and regulatory bylaws.
- 2.10 That the use of Crown lands for agricultural leases shall be encouraged.

Other directive policy groups added in this format.

End of Appendix 1 and of this delegation submission to Trust Council

**Town Hall Submission to the Trust Programs Committee
for the electronic meeting 9:00 A.M., 8 April, 2021
from Michael Sketch, North Pender Island**

Trust Programs Committee and staff – My draft trust policy statement and adjunct procedural bylaw is on today’s meeting agenda for consideration. I think the following points will help.

I’ve argued to Council that the current policy statement structure is ineffective in implementing preserve and protect directive policies in the trust area. Not effective in draft bylaws and more important, not in the day to day business of staff advice givers and local area decision makers.

I have shown remedy in two parts. First the structure of a rewritten trust policy statement and second the content.

Structure

The Act requires Council to adopt a bylaw which is a general statement of policies for the trust area which will further the trust object and may differ for different local trust areas. Nothing more.

The first part of my rewritten policy statement gives policies which are applicable to the entire trust area.

The second part gives policies grouped by topic which are directive in the sense that they are applicable to individual trust areas for inclusion in local policy and regulatory bylaws. A local area jurisdiction may petition Council to excuse individual directive policies, as the Act allows.

The two procedural matters of i) direction and of ii) Council excusing certain policies for a local area jurisdiction, are quite separate from the policies themselves and are held in an adjunct Council procedural bylaw.

The policy statement is exclusively a statement of policies, as it should be.

Content

The general policies applicable in the entire trust area are informed by the very real concern that the built environment will overwhelm the natural environment. Trust area policies can and must establish a lasting balance between demands of the built environment and the needs of the sustaining natural environment.

Mine is a first draft of policies for that important purpose.

Thank you for considering my rewritten policy statement structure and content submission.

Michael Sketch

